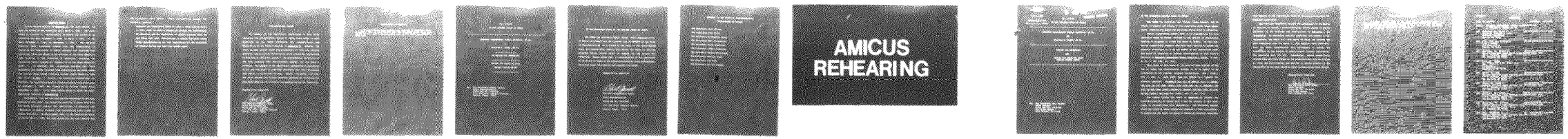
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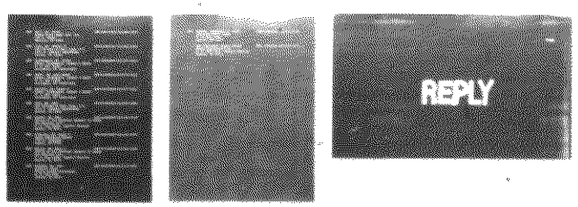
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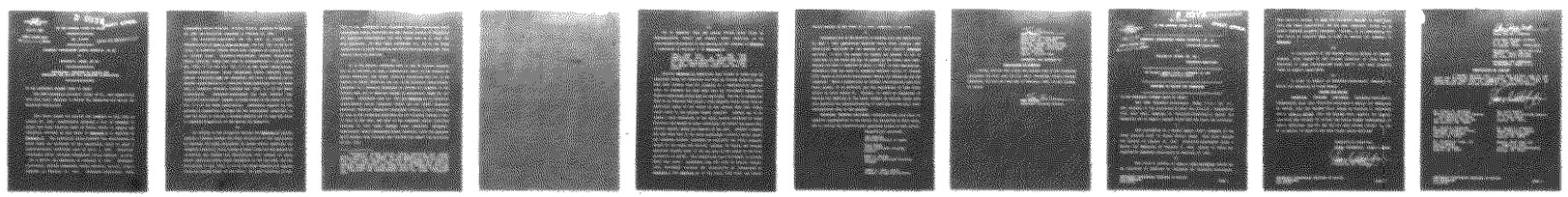

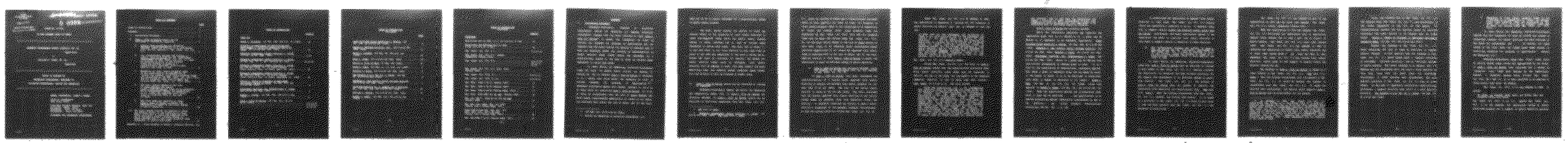

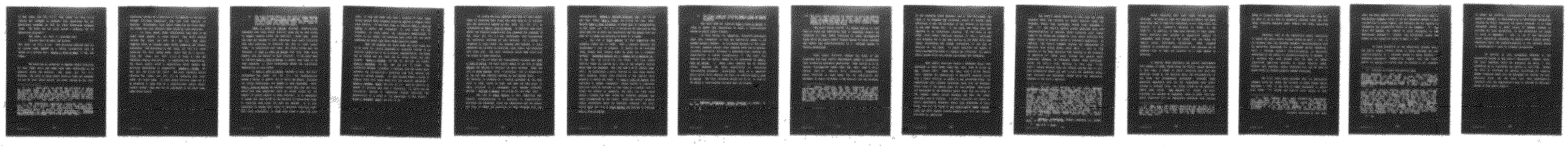

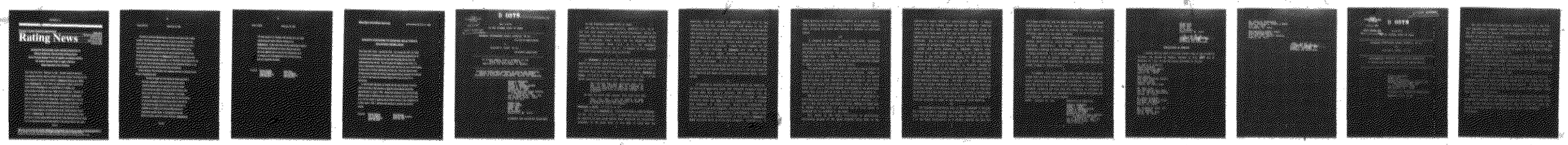
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CONCLUSION AND PRAYER

The members of the legislature represented in this brief recognize the extraordinary nature of using these means to pose questions to the court concerning the interpretation and application of the court's opinion in Edgewood II. However, the court in that opinion noted its mindfulness of "the very serious practical and historical difficulties which attend the Legislature in devising an efficient system." The extraordinary difficulty of the task presents this extraordinary request for the court's guidance. The members of the legislature represented in this brief do not ask the court to prescribe the means that the legislature must employ in fulfilling its duty. Rather, the members ask that the court provide the fullest possible guidance by answering the presented questions in ruling on the pending motion for rehearing.

Respectfully submitted,

The Honorable Robert Junell
State Representative
State Bar No. 11051500
P.O. Box 2910, Capitol Station
Austin, Texas 78711

NO. D-0378

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.

V.

WILLIAM N. KIRBY, ET AL.

ON MOTION FOR REHEARING

MOTION FOR LEAVE TO FILE

AMICUS CURIAE BRIEF

By: The Honorable Robert Junell
State Representative
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Case No. D-0378 Docketed: 10/09/90

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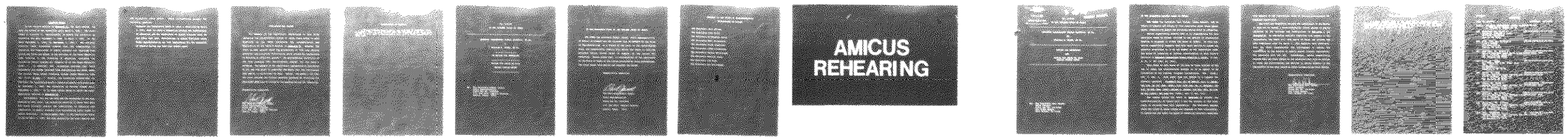
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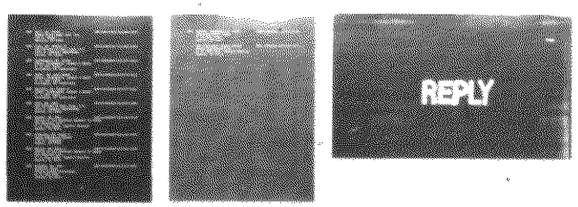
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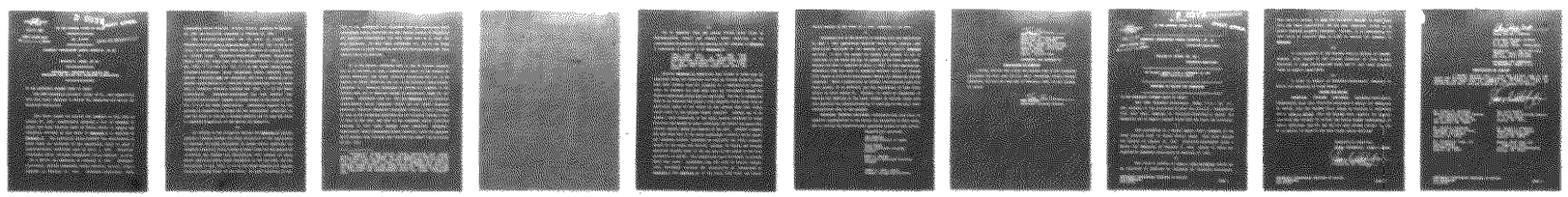

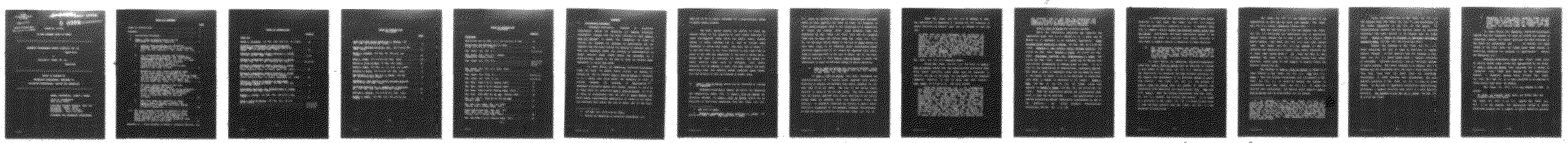

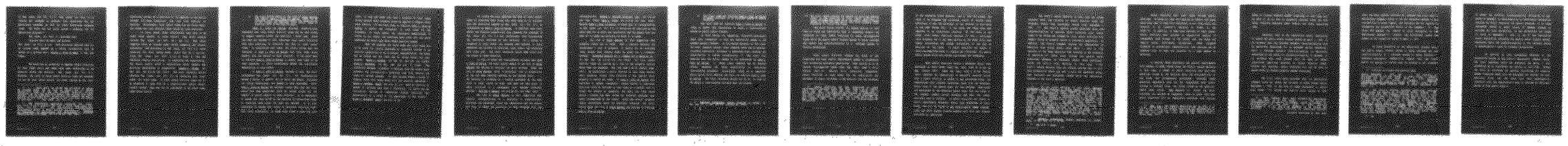

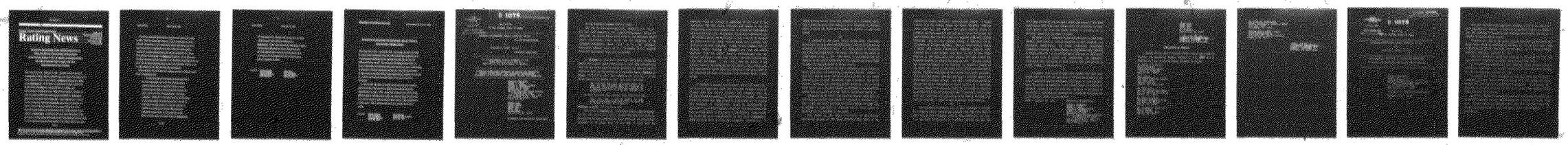
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State Representative
State Bar No. 11051500
P.O. Box 2910, Capitol Station
Austin, Texas 78711

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of February, 1991, a legible copy of this motion and the attached brief have been mailed by U.S. mail to the attached list of attorneys interested in this case.

NO. D-0378

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.

V.

WILLIAM N. KIRBY, ET AL.

ON MOTION FOR REHEARING

MOTION FOR LEAVE TO FILE

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AMICUS REHEARING

D 0378

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I hereby certify that on the 21st day of February, 1991, a legible copy of this Motion for Rehearing and Motion for Leave to File Amicus Curiae Brief was mailed by U.S. mail to the attached list of attorneys interested in this case.

ATTORNEYS

Case No. D-0378 Docketed: 10/09/90

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JUD McCown, Honorable F. Scott JUD 013465700 512/473-9300
District Court Judge
P. O. Box 1748
Austin, TX 78767

The Honorable Robert Junell SBN 11051500 512/463-0472
State Representative
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Austin, TX 78711

REPLY

D 0378 DIRECT APPEAL

IN THE SUPREME COURT OF TEXAS

NO. D-0378

MOTION FOR REHEARING-CAUSE

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.

V.

WILLIAM N. KIRBY, ET AL.

DEFENDANTS' RESPONSE TO MOTION FOR REHEARING AND MOTION FOR EXPEDITED DISPOSITION

TO THE HONORABLE SUPREME COURT OF TEXAS:

NOW COME Defendants William N. Kirby, et al., and respectfully file this their Response to Motion for Rehearing and Motion for Expedited Disposition.

I.

This Court issued its opinion and judgment in this case on January 22, 1991, conditionally granting a writ of mandamus to direct the 250th District Court of Travis County to observe the injunction affirmed by this Court in Edgewood I as modified by Edgewood II. The injunction would prohibit the distribution of state funds for education if the Legislature fails to enact a constitutionally sufficient plan by April 1, 1991. Plaintiff-Intervenors below, Alvarado Independent School District, et alia, filed a Motion for Rehearing on February 6, 1991. Defendant-Intervenors, Andrews Independent School District, et alia, filed a response on February 13, 1991. Defendant-Intervenors, Eanes

Independent School District, et alia, filed a response on February 19, 1991 and Plaintiffs responded on February 20, 1991.

The Plaintiff-Intervenors ask the Court to clarify its interpretation of Love v. City of Dallas, 120 Tex. 351, 40 SW.2d 20 (1931) to authorize clearly state-wide recapture of locally levied ad valorem taxes. Defendant-Intervenors, Andrews Independent School District, argue that such an interpretation would violate art. VIII, § 1-e and art. VII, § 3 of the Texas Constitution. Defendant-Intervenors, Eanes Independent School District, argue against overruling Love and recapture, and raise a question as to whether consolidation of a district which authorizes its own taxes into a recapture district violates art. VIII, § 1 of the Texas Constitution. Defendant-Intervenors are also fearful that Plaintiff-Intervenors' request is broad enough to run afoul of art. VII, § 5 of the Texas Constitution. Defendants respond for the purpose of suggesting a context for the intervenors' questions; to urge the Court to clarify a related question and to urge the Court to expedite disposition of the Motion for Rehearing.

II.

All parties to the litigation believe the Edgewood II opinion creates a tension between its clear invitation to the Legislature to exercise its broad discretion to create school districts (or recapture districts) along county or other lines for the purpose of collecting tax revenue and distributing that revenue to other school districts within their boundaries on the one hand, and the prohibition in art. VIII, § 1-e of the Texas Constitution against state ad valorem taxes, on the other. To avoid violation of art.

VIII, § 1-e, Defendants have concluded that the Legislature could consolidate school districts for the limited purpose of recapture[1] and equalized distribution, but that there must be at least two such districts. If this Court interprets art. VII of the Texas Constitution to allow recapture and redistribution state-wide, this tension would be resolved.

III.

It is the general consensus that if the ad valorem property tax is to continue to form a substantial basis of the funding of public education, and school district boundaries are not to be redrawn or school districts are not to be radically consolidated, recapture is a necessary mechanism to include all property in the revenue base and to equalize access to educational funds for all students. Defendants read art. VII and Edgewood II to authorize consolidation and/or recapture within the new school recapture districts (Regional Education Districts) without a local election so long as the recapture districts are not actually levying a tax. If this is the case, and each of the component school districts continue to levy taxes through local elections, Defendant-Intervenors, Eanes Independent School District, raise the question as to whether that violates the "uniform and equal" tax provision of art. VIII.

---

[1] "Recapture" groups current school districts into larger units, counties, or regions for the purpose of sharing revenue derived from local tax bases. Current school districts continue to levy their local taxes. State aid is computed with district property values intact, but funds above the guaranteed level are not kept within the current school district. These excess funds are "captured" and redistributed within the larger "recapture" unit.

IV.

As is apparent from the amicus curiae brief filed by Representative Junell and others, there continues to be considerable discussion of the meaning of the language of Edgewood I referenced in footnote 11 of Edgewood II.

> [This does not] ... mean that local communities would be precluded from supplementing an efficient system established by the legislature; however any local enrichment must derive solely from local tax effort.

Because Edgewood II emphasizes that access to funds must be equalized among all districts and that ad valorem property taxes must draw revenue from all property at a substantially similar rate, an argument has been made that any enrichment beyond the state's guaranteed yield must be equalized. One way to accomplish this is to restrict the yield a rich district could enjoy from an additional penny of tax effort to the revenue that that effort would yield in the poorest school district. Another way is to create a pool consisting of the extra revenue collected by those districts who decide to exert additional tax effort and share that revenue equally among the members of the pool. Another argument has been made that if the state guarantees a certain dollar amount per weighted student (achieved by utilizing the total property wealth of the state and derived, perhaps, by keying the maximum equalized funding level to the tax rate of the school at the 97th percentile of wealth), then unequalized local enrichment is allowed above that level. Defendants urge the Court to clarify whether local enrichment violates the Constitution as interpreted by Edgewood I and Edgewood II if the yield from local tax effort

varies because of the value of a local community's tax base.

V.

Defendants are in the position of working with the Legislature to meet a fast approaching deadline while other parties take conflicting positions on the meaning of this Court's 'Edgewood opinions. A bill has passed the Senate and another is out of committee in the House and may be passed by the House next week. Because the Court's deadline of April 1, 1991, is fast approaching, Defendants urge the Court to expedite whatever action it intends with regard to Plaintiff-Intervenors' Motion for Rehearing and the responses. While a possibility of further clarification from this Court exists, it is difficult for the Legislature to take final action on bills before it. Further, it would be disastrous to meeting the deadline if the Court renders an opinion which puts into question the constitutionality of portions of the bill under consideration late in the process.

WHEREFORE, PREMISES CONSIDERED, Defendants pray this Court to expedite consideration of the Motion for Rehearing in this cause, and to clarify the constitutional questions raised by this motion.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent via U.S. Mail, certified, return receipt requested, on this the 22nd day of February, 1991, to all counsel of record.

TONI HUNTER
Assistant Attorney General

D 0378 MOT. FOR REHEARING-CAUSE

NO. D-0378

IN THE SUPREME COURT OF TEXAS

DIRECT APPEAL

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET. AL.

Plaintiff-Appellants

v.

WILLIAM N. KIRBY, ET. AL.,

Defendant-Appellees

On Direct Appeal from a Judgment of the
250th District Court

RESPONSE TO MOTION FOR REHEARING

TO THE HONORABLE SUPREME COURT OF TEXAS:

NOW COME Defendant-Intervenors, Eanes I.S.D., et. al., and, pursuant to the provisions of Rule 190, T.R.A.P., respectfully file this their Response to Plaintiff-Intervenor's Motion for Rehearing and in support thereof would show the Court the following:

I.

This proceeding is a direct appeal from a judgment of the 250th District Court in Travis County, Texas. This Court entered its opinion on January 22, 1991. Plaintiff-Intervenors filed a Motion for Rehearing on February 6, 1991, notice of which was received by Defendant-Intervenors on February 11, 1991.

II.

This Court's holding in Love v. City of Dallas should not be overruled or modified as requested by Plaintiff-Intervenors.

This Court's holding in Love was correctly decided in accordance with the Texas Constitution and has been repeatedly relied on by school district property taxpayers. Further, it is unnecessary for this Court to overrule Love in order to enforce its judgment in Edgewood.

III.

A clarification of the Supreme Court's opinion is needed, however, with regard to the current authority of local school districts to issue tax-supported bonds and to levy local property taxes to support those bonds.

IV.

A brief in support of Defendant-Intervenors' Response to Motion for Rehearing is filed herein.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendant-Intervenors respectfully pray that Plaintiff-Intervenor's Motion for Rehearing be denied, that the Supreme Court refuse to overrule or otherwise modify Love v. Dallas, that the Supreme Court explain its opinion regarding the validity of current and future bonded indebtedness of school districts, and for any and all such further relief, at law or in equity, to which it may show itself justly entitled.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT-
INTERVENORS, EANES I.S.D

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Defendant-Intervenors' Response to Motion for Rehearing has been sent on the 5th day of February, 1991, by United States Mail, postage prepaid to all counsel of record.

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DIRECT APPEAL

D 0378 FOR REHEARING-CAUSE

CAUSE NO. D-0378

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET. AL.,

Appellants

V.

WILLIAM N. KIRBY, ET. AL.,

Appellees

BRIEF IN SUPPORT OF DEFENDANT-INTERVENORS' RESPONSE TO PLAINTIFF-INTERVENORS' MOTION FOR REHEARING

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ARGUMENT

I. Preliminary Statement

Defendant-Intervenors' response to Plaintiff-Intervenors' Motion for Rehearing (1) opposes Plaintiff-Intervenors' request that the Court overrule or limit Love v. City of Dallas[1/] to permit the "recapture" of local ad valorem tax revenues for purposes of equalization and (2) requests that the Court clarify its opinion to indicate that it does not adversely affect the validity or enforceability of school district bonds issued before the enactment of a constitutional system or the levy of local ad valorem taxes thereafter to retire such bonds.

In their Motion for Rehearing, Plaintiff-Intervenors urged the Court "to modify and/or clarify its opinion of January 22, 1991 to reverse Love v. City of Dallas or interpret it in a manner that would permit the recapture of local ad valorem revenues for purposes of equalization."[2/] Defendant-Intervenors oppose this request, because (1) there is no legal basis for overruling Love v. City of Dallas, (2) to do so would be inconsistent with the rule of stare decisis and would defeat long-standing expectations of voters at all school tax elections held within the last 60 years, and (3) the Court

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[1/] 120 Tex. 351, 40 S.W.2d 20 (1931).

[2/] Motion for Rehearing of Plaintiff-Intervenors, p.3.

need not do so to permit enactment of a constitutional system of public school finance.

The Court should clarify its opinion to avoid any adverse effect on the authority of local school districts to issue tax-supported bonds while the public school finance system is being reformed and to levy ad valorem taxes thereafter to retire such bonds. The court did so below [1], as did this Court in its first decision in this case,[2] and no party to the case has complained of the court's action below. Unless the Court so clarifies its opinion, the market for school district bonds could be disrupted, local school districts will be exposed to great risk under federal and state securities laws, and urgently needed classroom space either will not be built or will be financed at higher costs.

II. Love v. City of Dallas should not be overruled or limited as requested.

Defendant-Intervenors oppose the Motion for Rehearing and respectfully submit that (1) Love v. City of Dallas was correctly decided, (2) Love v. City of Dallas should not be overruled to facilitate compliance with Tex. Const. art. VII,

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[1] See note 15 infra.

[2] Edgewood Independent School District v. Kirby, 777 S.W.2d 391 (Tex. 1989). See also note 11 infra.

§ 1, since its holding is based upon a constitutional enactment which is more specific and later in time; (3) recapture of local school property taxes is not authorized as an expenditure of "state" tax revenue, since state property taxes are prohibited by Tex. Const. art. VIII, §1-e and all property taxes must be equal and uniform under Tex. Const. art. VIII, §1; (4) the Court should adhere to the rule of stare decisis in this case, since to do otherwise would unreasonably defeat justified expectations of all voters who approved local school taxes at elections held in the last 60 years; and (5) the Court need not overrule or limit Love v. City of Dallas to permit the legislature to enact an efficient system of public education.

A. Love v. City of Dallas was correctly decided, since its holding is in accordance with the fair meaning of Tex. Const. art. VII, §3.

In Love v. City of Dallas, this Court considered the constitutionality of a statute which required local school districts to educate non-resident high school students for not more than $7.50 per month. The cost to the Dallas school district of doing so was $13 per month. The Court concluded that the statute required local school districts to use locally raised funds for purposes other than education within the district. It therefore construed the statute to make a school district's acceptance of non-resident students discretionary, so that the statute would not violate Tex. Const. art. VII, §3.

Under Tex. Const. art. VII, § 3 as amended in 1883, the legislature is empowered to "provide for the formation of school districts by general laws" and, as amended in 1920 and 1927,

> to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, . . . and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of free public schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax . . . .

Tex. Const. art. VII, § 3 (emphasis added).

Citing Tex. Const. art VII, § 3, the Court in Love v. City of Dallas stated that the constitutional provisions under which school districts raise funds must be construed to restrict the use of the funds "for the benefit of the immediate community, district, or city in which they were located." Love, supra, 40 S.W.2d at 25. The Court stated:

> Since the Constitution, art. 7, §3, contemplates that districts shall be organized and taxes levied for the education of scholastics within the districts, it is obvious that the education of nonresident scholastics is not within their ordinary functions as quasi-municipal corporations; and under the authorities cited the Legislature is without power to impose such an obligation on them, without just compensation. Aside from this rule, the necessary implication from the constitutional provision is that the Legislature cannot compel one district to construct buildings and levy taxes for the eduation of non-resident pupils. The Legislature, by section 3, art. 7, is only authorized to permit school districts to impose taxes for these purposes for schools within

the district, and to say that the Legislature can compel a district to admit nonresidents without just compensation would be permitting that department to do indirectly what it admittedly cannot do directly.

Love v. City of Dallas was correctly decided.

While the legislature generally may exercise any legislative power that is not denied to it, a power may be denied to it expressly or by necessary implication. Lower Colorado River Authority v. McGraw, 125 Tex. 268, 83 S.W.2d 629 (1935), Shepherd v. San Jacinto Junior College District, 363 S.W.2d 742 (Tex. 1962); Perkins v. State, 367 S.W.2d 140 (Tex. 1963); Government Services Ins. Underwriters v. Jones, 368 S.W.2d 560 (Tex. 1963). Denial of a power may be implied from restrictions accompanying an express grant of power. "It is a rule for the construction of Constututions, constantly applied, that where a power is expressly given and the means by which, or the manner in which, it is to be exercised is prescribed, such means or manner is exclusive of all others." Parks v. West, 102 Tex. 11, 111 S.W. 726, 727 (1908), cited with approval in Walker v. Baker, 145 Tex. 121, 196 S.W.2d 324, 327 (1946). "When the Constitution defines the circumstances under which a right may be exercised . . . , the specification is an implied prohibition against legislative interference to add to the condition." Id., citing Cooley's Constitutional Limitations, 8th Ed., Vol. 1, p. 139.

In authorizing the legislature to empower local school districts to levy taxes, Tex. Const. art. VII, § 3 clearly limits the legislature's authority to do so. It empowers taxes only to support schools within the district within which they are levied. Accordingly, the Texas Constitution denies to the legislature the power to authorize local school districts to levy taxes to support schools or education in other districts.

B. Any inconsistency between the holding in Love v. City of Dallas and the "efficiency" requirement of Tex. Const. art. VII, § 1 must be resolved in favor of the holding, since the holding is based on a constitutional enactment which is more specific and later in time.

In their Motion for Rehearing, Plaintiff-Intervenors argue that Love v. City of Dallas must be overruled or limited to give effect to Tex. Const. art. VII, § 1. Section 1 directs the legislature "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex. Const. art. VII, § 1. The holding of Love v. City of Dallas does not prevent or restrict the legislature from exercising its constitutional duty. (See Part II.E. infra.) Were the holding inconsistent with Tex. Const. art. VII, § 1, however, the holding must prevail. It is based on a provision in Tex. Const. art. VII, § 3 which is both later in time and more specific than Tex. Const. art. VII, § 1 and therefore is controlling.

Tex. Const. art. VII, § 1 was adopted as part of the Constitution of 1876 and has never been amended. Tex. Const. art. VII, § 1, interp. commentary (Vernon 1955).

When the Constitution of 1876 was adopted, Tex. Const. art. VII, § 3 authorized the legislature only to appropriate general state revenue and to levy a poll tax in support of public schools. Tex. Const. art. VII, § 3, hist. note (Vernon 1955). Tex. Const. art. VII, § 3 was amended in 1883 to authorize the legislature to create local school districts and to grant them taxing power.[5/] Id. From the date of that amendment, Tex. Const. art. VII, § 3 has limited local school districts' taxing power to the support of schools within the district levying the tax.

The holding in Love v. City of Dallas is based on a clear reading of Tex. Const. art. VII, § 3. (See Part II.A. supra.) Were the holding inconsistent with the mandate of Tex. Const. art. VII, § 1, it would be because the mandate is inconsistent with Tex. Const. art. VII, § 3. If these two sections were inconsistent, the section which supports Love v. City of Dallas must be given effect for two reasons.

[5/] As amended in 1883, Tex. Const. art. VII, § 3 conditioned tax levies on a two-thirds vote of a district's electors and limited the tax to $0.20 per $100 assessed value except when levied by independent municipal school districts. Tex. Const. art. VII, § 3 was amended in 1909 to raise the tax limit and to substitute a majority vote, in 1920 to expand the exception to the tax limit to include all independent school districts, and in 1926 to require the formation of school districts by general laws. These amendments are not material to the issue at hand.

First, the relevant part of Tex. Const. art. VII, § 3 was adopted after Tex. Const. art. VII, § 1 and accordingly is the latest expression of the will of the people. If inconsistencies between the two sections cannot be resolved otherwise, the later section to be adopted must be given effect. Farrar v. Board of Trustees of Employees Retirement System of Texas, 150 Tex. 572, 243 S.W.2d 688 (1951).

Second, the language of Tex. Const. art. VII, § 3, which authorizes the levy of taxes by districts to support schools "therein," is more specific than the language of Tex. Const. art. VII, § 1, which speaks about a "general diffusion of knowledge," "suitable provision," and an "efficient system" of public schools. The latter language is so general that its meaning was not discovered until the Court's first decision in this case, more than 100 years after its enactment. Accordingly, if these sections were inconsistent, the more specific provision of Tex. Const. art. VII, § 3 must be given effect. In the case of apparently inconsistent constitutional provisions, a general provision must yield to a more specific provision. San Antonio & A.P. Ry. Co. v. State, 128 Tex. 33, 95 S.W.2d 680 (1936).

C. Recapture of local school property taxes is not authorized as an expenditure of "state" tax revenue, since state property taxes are prohibited by Tex. Const. art. VIII, §1-e and all property taxes must be equal and uniform under Tex. Const. art. VIII, §1(a).

In their Motion for Rehearing, Plaintiff-Intervenors implied that the "recapture" of local ad valorem tax revenue is authorized, because "all school districts are mere creatures of the State for convenience, and . . . , in reality, all taxes raised at the local level are indeed State taxes subject to state-wide recapture for purposes of equalization." (Motion for Rehearing, p.2.)

Defendant-Intervenors agree that "local" taxes would in reality become taxes levied and appropriated by the State, if Love v. City of Dallas were overruled and a system to "recapture" local taxes were enacted by the legislature. However, a recapture system would violate Tex. Const. art. VIII, §§ 1 and 1-e, if it were justified as an exercise of state control over state tax revenue.

Tex. Const. art. VIII, § 1-e was adopted in 1968. It states:

> No State ad valorem taxes shall be levied upon any property within this State.

Tex. Const. art. VIII, § 1-e, ¶ 1. Before Tex. Const. art. VIII, § 1-e was adopted, the legislature levied an annual state-wide property tax in support of public education pursuant

to Tex. Const. art. VII, § 3.[6] Tex. Const. art. VIII, § 1-e clearly was intended to prohibit this state-wide tax for educational purposes as well as other state-wide property taxes. The State has not since levied a property tax for educational purposes.[7]

Tex. Const. art. VIII, § 1 provides that:

Taxation shall be equal and uniform.

Tex. Const. art VIII, § 1(a). This provision requires that all ad valorem taxes imposed by a taxing jurisdiction must be levied at a uniform rate. Norris v. City of Waco, 57 Tex. 635 (1882).

The State has no authority to empower school districts to levy taxes until the taxes have been authorized at an election within the district. Tex. Const. art. VII, § 3. Moreover, the rates at which school district taxes are assessed are set by local school boards, are often limited by the local

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[6] ". . . there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred ($100.00) dollars valuation, as with the available school fund arising from other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year . . ." Tex. Const. art. VII, § 3.

[7] The legislature apparently construed Tex. Const. art. VIII, § 1-e to prohibit the levy of state taxes under Tex. Const. art. VII, § 3. The legislature's contemporaneous construction should be given serious consideration. Director of Department of Agriculture and Environment v. Printing Industries Ass'n of Texas, 600 S.W.2d 264 (Tex. 1980).

electorate (either as a condition to its approval of the tax or through roll-back elections), and vary from district to district. Accordingly, local school taxes are not state taxes, but rather are local district taxes levied by local districts.

If local school taxes nevertheless were held to be state taxes subject to state control, they would clearly violate Tex. Const. art. VIII, §§ 1 and 1-e: They would comprise state ad valorem taxes levied unequally and without uniformity. The provisions of Tex. Const. art. VII, § 3, which authorize the local taxing power, would then be a nullity, since Tex. Const. art. VIII, § 1-e is later in time and therefore clearly controlling. In construing the Constitution, the courts should avoid a construction which renders any provision meaningless or inoperative. Hanson v. Jordan, 145 Tex. 320, 198 S.W.2d 262 (1947). The Court therefore should construe Tex. Const. art. VII, § 3 to authorize only local taxes, not state taxes. If local school district taxes are to be preserved in some form in a constitutional public school finance system, they may not be considered to be state taxes under state control.

D. **The Court should adhere to the rule of stare decisis and uphold Love v. City of Dallas, since to do otherwise would unreasonably defeat the expectations of all voters who approved local school taxes at elections held in the last 60 years.**

Love v. City of Dallas provided constitutional assurance that local school district taxes may be used solely to support schools within the districts levying them. Since the case was decided in 1931, countless local school districts have held elections to authorize the levy of local school taxes. In authorizing such taxes, the voters relied upon the assurance of Love v. City of Dallas that such taxes would benefit only the schools in their district. If the Court were to overrule Love v. City of Dallas to permit such taxes to be used otherwise, it would unreasonably defeat the justifiable expectations of such voters.

In Love v. City of Dallas, decided in 1931, the Court interpreted Tex. Const. art. VII, § 3. Its interpretation became a matter of general law of which the people, including its voting electorates, are deemed to have knowledge. After Love v. City of Dallas was decided, voters knew that any local school tax they authorized could be levied solely for the support of public schools in their district. It is reasonable to assume that they relied on the decision in authorizing taxes at elections held since the case was decided. It is also reasonable to assume that voters in wealthier districts might have voted differently, or might have voted a lower tax rate

limit, if they had known that only a fraction of local taxes levied against their property would be applied to support their local schools. If the Court were to overrule Love v. City of Dallas to permit the "recapture" of local taxes for use elsewhere, it would defeat the reasonable expectations of voters at all school tax elections held since 1931 and would undermine the basis upon which these elections passed.

When the purposes for which bonds and local taxes are to be voted are clearly expressed or otherwise limited in an election proposition or by collateral representation, the bonds may be issued and the taxes may be levied solely for that purpose. Moore v. Coffman, 109 Tex. 93, 200 S.W. 374 (1918); Black v. Strength, 112 Tex. 188, 246 S.W. 79 (1922). The limitation becomes, in effect, a contract with the voters which prevents the jurisdiction's governing body from levying the taxes for another purpose. "It then becomes simply a matter of keeping faith with those whose will the election expressed." Moore v. Coffman, supra, 200 S.W. at 374. Once an election is passed in reliance upon such a limitation, "it could not be arbitrarily ignored or repudiated without involving the perpetration of a fraud or its equivalent on the voters." Black v. Strength, supra, 246 S.W. at 80.

All voters who have approved the levy of local school taxes at elections held since 1931 have done so in reliance upon the limitation imposed by Tex. Const. art. VII, § 3, as interpreted by Love v. City of Dallas. In addition, many local school tax election propositions have repeated the language of Tex. Const. art. VII, § 3 and, accordingly, have incorporated the limitation confirmed by that decision. If a system of recapture of local school tax revenues were enacted, it could undermine the validity of countless local school tax elections held since 1931. The Court therefore should keep faith with the voters at these elections.

In view of great and long-standing reliance upon Love v. City of Dallas, the Court should adhere to the rule of stare decisis and decline to overrule its prior holding. Under the rule of stare decisis, after "a principle, rule or proposition of law has been squarely decided by the Supreme Court, . . . the decision is accepted as a binding precedent by the same court or other courts of lower rank when the very point is again presented in a subsequent suit between different parties." Swilley v. McCain, 374 S.W.2d 871, 875 (Tex. 1964).

The rule of stare decisis is most compelling when judicial interpretations of a statutory or constitutional provision are concerned, since the legislature and the people are free to amend the provision if they disagree with the

interpretation. Marmon v. Mustang Aviation, Inc., 430 S.W.2d 182 (Tex. 1968); Moss v. Gibbs, 370 S.W.2d 452 (Tex. 1963). Because Love v. City of Dallas is based upon an interpretation of Tex. Const. art. VII, § 3, it should not be overruled by the Court when for 60 years the legislature and the people have not seen fit to amend the provision on which it is based.

The rule of stare decisis is also compelling when property rights are at stake. Once a judicial decision has established a rule of property, it should not be disturbed "even though good reasons might be given for a different holding." Southland Royalty Co. v. Humble Oil & Refining Co., 151 Tex. 324, 249 S.W.2d 914, 916 (1952). All local school district taxes are secured by a lien on the property against which they are assessed. Tex. Tax Code § 32.01 (Vernon Supp. 1991). By authorizing a school district to levy taxes against their property, voters also authorize a lien against their property to secure the taxes. If Love v. City of Dallas were overruled to permit "recapture," school boards in wealthier districts could be inclined to levy taxes at a greater rate to offset the effects of recapture, and their tax liens would secure a greater tax debt levied for different purposes than those contemplated by the voters. Since the voters' property rights accordingly would be adversely affected, the Court should apply the rule of stare decisis and decline to overrule Love v. City of Dallas.

E. The Court need not overrule Love v. City of Dallas to permit enactment of an efficient system of public education.

The Court need not overrule Love v. City of Dallas in order to permit the legislature to enact a constitutional system of public school finance.

In their Motion for Rehearing, Plaintiff-Intervenors admit that "recapture" is only one legislative remedy to the present system's defects. In its second decision in this case, the Court suggests several other remedies which may be enacted, including substantial increases in dedicated state revenues and consolidation of taxing jurisdictions. [1] The Court also observes that the latter remedy is not prohibited by Love v. City of Dallas. [2] These other remedies may be enacted without amending the Texas Constitution or overruling long-standing precedent. Accordingly, there is no important public policy which requires the Court to overrule Love v. City of Dallas. The Court therefore should not do so, in view of the people's long-standing reliance upon its holding.

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[1] Edgewood Independent School District v. Kirby, 34 Tex. Sup. Ct. J. 287, 290-291 (January 22, 1991).

[2] Id.

III. The Court should clarify its opinion to avoid any adverse effect on the authority of local school districts to issue tax-supported bonds while the public school finance system is being reformed and to levy local property taxes thereafter to retire such bonds.

The Court should clarify its second opinion in this case to avoid any implication that it adversely affects the authority of local school districts to issue tax-supported bonds while the public school finance system is being reformed and before the constitutionality of a reformed system is finally adjudicated.

Local school districts finance the costs of new classrooms and other capital improvements needed to accommodate their burgeoning scholastic populations. They usually do so by issuing tax-supported bonds under Tex. Educ. Code § 20.01 (Vernon 1987).[10/] Section 20.01 authorizes independent school districts to issue bonds "for the construction and equipment of school buildings in the district and the purchase

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[10/] School districts are also authorized to issue tax-supported refunding bonds, Tex. Educ. Code § 20.05 (Vernon 1987); Tex. Rev. Civ. Stat. Ann. art. 717k (Vernon 1964 & Vernon Supp. 1991), tax-supported certificates of indebtedness, Tex. Educ. Code § 20.55 (Vernon Supp. 1991), and tax-supported contractual obligations, Tex. Loc. Gov't Code §§ 271.001 et seq. (Vernon 1988), among other tax- and revenue-supported obligations.

of the necessary sites therefor, and to levy and pledge, and cause to be assessed and collected, annual ad valorem taxes sufficient to pay the principal of and interest on said bonds as the same become due," if the bonds and taxes have been approved at an authorizing election. By the terms of the bonds, local school districts contract to levy a sufficient local property tax to pay debt service on the bonds while they remain outstanding and pledge collections of the tax as security for the bonds. If school districts are unable to issue tax-supported bonds to finance new classrooms, our public school system would soon become overcrowded and inadequate.

Many school districts obtain a Permanent School Fund guarantee of their bonds under Tex. Educ. Code §§ 20.901 et seq. (Vernon 1987). Under Tex. Educ. Code § 20.909 (Vernon 1987), whenever the Commissioner of Education receives notice that a school district is unable to pay guaranteed bonds, the Commissioner must transfer sufficient funds from the Permanent School Fund to the paying agent for that purpose. When bonds are guaranteed by the Permanent School Fund, they are rated in the highest credit rating category and bear the lowest available rate of interest. If school districts are unable to obtain enforceable Permanent School Fund guarantees of their bonds, they will be forced to pay significantly higher interest rates and after paying interest expense will have less revenue available for operations.

The Court's second decision in this case has raised concerns about the validity of school district bonds and Permanent School Fund guarantees issued since September 1, 1991. [11] The Court's opinion raises questions about the constitutionality of statutes which authorize local school taxes to be levied and pledged by local school districts with unequal ratios of property wealth to scholastic population. In addition, the Court's judgment enjoins the Commissioner of Education from giving effect after April 1, 1991 to "the sections of the Texas Education Code relating to the financing of education," [12] which could include the section which authorizes payments on Permanent School Fund guarantees. Unlike the Court's first decision in this case, [13] the Court's second decision does not clearly provide that it will have prospective effect and that it will not adversely affect bond contracts and guarantees issued while the legislature responds to the court's decision.

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[11] In its first decision in this case, Edgewood Independent School District v. Kirby, supra, 777 S.W.2d 392, the Court affirmed a trial court judgment which provided that it "shall have prospective effect only and shall in no way affect . . . the validity, incontestability, obligation of payment, source of payment or enforceability of any bond, note or other security (irrespective of its source of payment) to be issued and delivered . . . by Texas school districts for authorized purposes prior to September 1, 1990, nor . . . the validity or enforceability of any tax hereafter levied, or other source of payment provided for any such bond, note, or other security (irrespective of its source of payment . . . ". Edgewood Independent School District v. Kirby, No. 362,516 (Dist. Ct. of Travis County, 250th Judicial Dist. of Texas, April 30, 1987), p.8.

[12] Edgewood Independent School District v. Kirby, supra, 34 Tex. Sup. Ct. J. at 291.

[13] See note 11 supra.

School districts sell their bonds through public offerings. In doing so, they are required by federal and state securities laws to make full disclosure of all risks which are material to an investor's decision to invest in the bonds.[14/] In addition, to make good delivery of their bonds, school districts must provide an unqualified opinion of independent bond counsel to the effect that the bonds are legally valid, enforceable obligations. Under accepted standards of professional responsibility, such opinions can be rendered only if they are accurate to a high degree of certainty.

In meeting these disclosure and opinion requirements with respect to bonds issued since the Court's second decision in this case, a number of school districts have disclosed questions raised by the decision about the enforceability of the bonds and accompanying guarantees. Although these questions apparently have not yet jeopardized bond credit ratings or interest rates, the issues raised by the questions remain under review. (See Appendix A.) Unless the Court clarifies its opinion as requested, there is great risk that school districts will be immediately prevented from issuing

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[14/] See, e.g., the federal Securities Act of 1933, § 17 (15 U.S.C.A. § 77q), the federal Securities and Exchange Act of 1934, § 10b (15 U.S.C.A. § 78j), and the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 et seq. (Vernon 1964 & Vernon Supp. 1991).

bonds to finance urgently needed classrooms or that they will be able to do so only at excessive interest rates and with undue liability exposure under federal and state securities laws.

Moreover, even if the legislature enacts legislation to reform the public school finance system by April 1, 1991, it is unlikely that the reformed system's constitutionality will be decisively determined for an extended period thereafter. Until a reformed system's constitutionality is decisively determined or the effect of unconstitutionality is delayed, it is unlikely that bond counsel will be able to render unqualified approving opinions on school district bonds. Without such opinions, school districts will not be able to market bonds to finance urgently needed classrooms.

The trial court below provided that its declaratory judgment would not affect the validity of bonds issued before September 1, 1991, or the levy of taxes thereafter to retire such bonds. [15] Unlike the Court's first action in this

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[15] "This judgment shall have prospective application only and shall in no way affect . . . the validity, incontestability, obligation of payment, source of payment, or enforceability of any bond, note, or other security (irrespective of its source of payment) to be issued and delivered . . . by school districts for authorized purposes

Footnote continued on next page

case, the Court neither affirmed nor reversed the trial court's declaratory judgment (since it did not determine whether it had jurisdiction on direct appeal) and therefore did not approve or disapprove the prospective nature of the judgment. [16] The Court did express its "desire to avoid disruption of the educational process"[17], however, and accordingly stayed the effect of its injunctive relief to April 1, 1991.

To avoid disruption of the educational process while the public school finance system is being reformed and the constitutionality of a reformed system is being determined, Defendant-Intervenors respectfully request that the Court modify its opinion to clarify that its holding is not intended

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[15] Footnote continued from previous page

before September 1, 1991, nor . . . the validity or enforceability of any tax levied, or other source of payment provided for any such bond, note, or other security (irrespective of its source of payment) . . ." Edgewood Independent School District v. Kirby, No. 362,516 (Dist. Ct. of Travis County, 250th Judicial Dist. of Texas, September 24, 1990), p.4.

[16] The Court's opinion includes unsettling language which raises the spector of retroactive effect, however. The Court notes that the judgment affirmed by the Court's first judgment in the case is a judgment of the Supreme Court as well as the trial court. The Court states that the trial court "clearly abused its discretion in refusing to enforce the mandate of this Court issued in Edgewood I." Edgewood Independent School District v. Kirby, supra, 34 Tex. Sup. Ct. J. at 291. The Court's first judgment in this case affirmed a declaratory judgment which, by implication, could adversely affect the statutory authority for tax-supported school bonds issued after September 1, 1990. See note 11 supra.

[17] Id.

to affect the validity, incontestability, obligation to pay, source of payment, or enforceability of contractual obligations incurred by school districts for public purposes, or of taxes thereafter levied or other source of payment pledged or provided for such obligations, if the obligations are issued (1) prior to September 1, 1991, or (2) if the legislature enacts legislation reforming the public school finance system, thereafter until the constitutionality of the reformed system is determined by a court of ultimate jurisdiction.

No parties to this proceeding objected to the prospective nature of the court's declaratory judgment below. The Court therefore would not prejudice any party to this proceeding by so clarifying its opinion at this time. Unless the Court so clarifies its opinion, borrowings for urgently needed classroom space will be disrupted for wealthy and poor districts alike, and the Court will have unnecessarily interfered with the legislature's duty to provide an efficient system of free public schools.

APPENDIX A

Moody's Public Finance Department

Rating News

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MOODY'S MONITORS NEW DEVELOPMENTS IN TEXAS SCHOOL FINANCING LITIGATION

Bond Counsel Raises Issues of Legality and Enforceability for School District Debt in Light of Recent Texas Supreme Court Decision

New York, New York - February 13, 1991 - Moody's Investors Service is investigating concerns raised by certain Texas bond counsel resulting from the Texas Supreme Court's recent decision in Edgewood I.S.D. et. al. v. Kirby et. al. (Edgewood II). All law firms are continuing to deliver opinions for school district financings that are unqualified as to validity and enforceability of the debt, as is the Texas Attorney General. However, at least one major law firm has made a special assumption in rendering its opinions fro new school district financings. It has assumed that a court of ultimate jurisdiction would give prospective effect only to its decision if it were to find the statutory authority for such school district debt to be unconstitutional based on an interpretation of the Texas Supreme Court's decision in Edgewood II. Counsel has also noted that enforceability of the guarantee of certain school district debt by the Texas Permanent School Fund could be dependent upon the enforceability of the school district debt itself.

(more)

Moody's is currently discussing the concerns noted above with outside counsel. Until the consultation with our counsel is concluded, however, Moody's will continue to rate Texas school district debt issues that have a legal opinion that is unqualified as to their validity and enforceability, whether or not such opinions include the above assumptions as to future developments resulting from the Edgewood II decision. At the same time, Moody's will include specific language in our Municipal Credit Reports for all school district issues disclosing these concerns and indicating whether or not the legal opinion for the debt includes these assumptions.

Robert Stanley, Vice President and Assistant Director in Moody's Public Finance Department said:

> We feel strongly that this disclosure-based approach is the most responsible one at this time, since the issues raised by experienced and reputable counsel in these circumstances are global, affecting all school district debt issues, and do not raise concerns specific to any single transaction. However, in accordance with our normal policy, no non-credit supported Texas school district debt will be rated where the legal opinion is in any way reasoned or qualified as to validity and enforceability because of transaction specific issues, as distinguished from the global concerns raised by counsel relating to Edgewood II.

We will continue our dialogue with counsel as to the legal implications for school districts arising out of Edgewood II. At the same time, we are continuing to explore the financial implications for school districts with state and local officials and we will provide information as to the results of our investigationsin both of these areas as soon as it becomes available.

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MOODY'S CONTINUES TO MONITOR TEXAS SCHOOL FINANCING LEGISLATION

New York, New York -- January 30, 1991 -- On January 23, 1991, the Texas Supreme Court unanimously ruled the 1990 revised school financing law as unconstitutional declaring that the new law essentially leaves intact the deficiencies of the old law. The court gave the legislature until April 1 to enact a replacement constitutional plan; after that date the court would impose an injunction on further distribution of state aid. Given the various levels of dependency on state aid among Texas school districts, Moody's will evaluate on a case by case basis the potential impact of the loss of state aid on operations.

In term of debt issuances, on January 28, the state Attorney General's office stated that it will continue to approve school district financings delivered prior to April 1, 1991. Absent the enactment of a constitutionally sufficient plan or additional court action, the Attorney General's office said they, "will be unable to approve school district bonds or other obligations on or after April 1, 1991." Moody's will continue to monitor the situation closely.

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D 0378 MOTION FOR REHEARING-CAUSE

NO. D-0378

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Plaintiff-Appellants,

V.

WILLIAM N. KIRBY, ET AL.,

Defendant-Appellees.

On Direct Appeal from a Judgment of the
250th District Court and on
Application for Enforcement of Mandate

PLAINTIFF-APPELLANTS RESPONSE TO MOTION FOR REHEARING, AMICUS CURIAE BRIEF, AND DEFENDANT-INTERVENORS' RESPONSES TO PLAINTIFF-INTERVENORS' MOTION FOR REHEARING

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TO THE HONORABLE SUPREME COURT OF TEXAS:

NOW COME the Plaintiffs-Appellants, Edgewood I.S.D., et al., who file this response to the Plaintiff-Intervenors' Motion for Rehearing, the Amicus Curiae Brief filed by the Honorable Robert Junell (hereinafter Junell Brief) and the Responses of the Defendant-Intervenors' Eanes I.S.D., et al., and Defendant-Intervenors Andrews I.S.D., et al. In support of this response Plaintiff-Intervenors would show as follows:

I.

In Edgewood I, this Court held that the people [those who passed the original Texas Constitution of 1876] were contemplating that the tax burden would be shared uniformly and that the state's resources would be distributed on an equitable basis, Edgewood v. Kirby, 777 S.W.2d at 396. With regard to Art. VII, Sec. 3 of the Texas Constitution passed in 1883, this Court held that:

> "we conclude that this provision [Art. VII, Sec. 3] was intended not to preclude an efficient system but to serve as a vehicle for injecting more into an efficient system. (In original).

To make the point even clearer, this Court held that:

> "Art. VII, Sec. 3 was an effort to make schools more efficient and cannot be used as an excuse to avoid efficiency."

Edgewood v. Kirby, 777 S.W.2d at 397.

This Court in Edgewood II, interpreted Love v. City of Dallas, 120 Tex. 351, 40 S.W.2d 20 (1931), to mean that districts could not be required to send money beyond their districts for educational purposes; on the other hand, it also made it clear that the

districts could be created or destroyed at the will of the Legislature and that taxing districts with powers to tax and redistribute within their borders could be created and superimposed upon existing districts. Furthermore, those existing districts can (and probably should) be structured in such a way as to maximize the efficiency of the school finance system and to prevent such oddities as tax haven districts. Indeed, we must remember that the district court's findings in Edgewood were that the school districts lines and school district configurations were not rational and serve no compelling interest, and these findings have never been challenged. It has clearly been the opinion of the district court on two occasions and this court on two occasion that the disparities of wealth among the districts is the major cause of the inequities and waste of resources in the present school finance system.

II.

In response to Plaintiff-Intervenors' Motion for Rehearing, the Plaintiff-Appellants agree that statewide recapture would be allowed under this Court's opinions, that recapture local ad valorem revenues for purposes of equalization is allowed. Although Plaintiffs agree that Love should be interpreted not to prevent such recapture, or alternatively, should be reinterpreted or overruled to allow such recapture, Plaintiff-Intervenors argue that such reinterpretation or overruling is not necessary. These issues can be decided by an interpretation of this Court's Edgewood v. Kirby decisions which do allow such recapture. Alternatively, if

these opinions do not allow such recapture on a statewide basis, they clearly do allow such recapture on a countywide or regional basis allowing the state many methods to achieve an efficient system.

III.

In response to the Junell Amicus Curiae brief, Plaintiffs would point out that State Representative Junell filed a motion to intervene in the District Court. On a joint motion of Plaintiffs and Plaintiffs-Intervenors, the Junell intervention was struck by Judge McCown on May 1, 1990. This denial of intervention was not appealed by the Junell intervenors at any time and now they attempt to appear by the subterfuge as amicus curiae.

The questions posed by the Junell intervenors are an effort to entice this Court into rendering an advisory opinion. Indeed, if this Court were to do so, the Court would also have to also extend that privilege to other legislators (upon information and belief several legislators are considering such questions), and it would enter itself into a dialogue between the branches of the government rather than ruling upon an actual case or controversy before it.

The amicus curiae brief is an effort by several legislators to avoid dealing with the clear import of this Court's decision, i.e., that is that the entire structure of school finance in Texas must be changed to stop waste of resources and to allow access to resources for all students in the state.

This effort by the Junell intervenors is particularly unfortunate because of the great progress being made in the

Legislature toward reaching a Constitutional system. A school finance bill has already passed the Senate Education Committee (nine votes for; two against) that would equalize access to revenues for every penny of tax rate up to a $1.50 and provide for approximately $500 million a year of recapture funds from wealthy districts. The bill will further provide an additional 10% of enrichment on an equalized basis. The bill would actually create a system under which Edcouch-Elsa, Edgewood, Copperas Cove, Highland Park, Alamo Heights, Glen Rose, as well as every other district in the state would have exactly the same revenue per weighted students at exactly the same tax rate. The same concept has gained the support of the Governor, Lt. Governor, Speaker of the House, and chairs of the House Public Education Committee in Senate, Education Committee as well as the Plaintiffs' attorneys, Plaintiff-Intervenors' attorneys and State's Attorney General and Texas Education Agency counsel. The Juneil intervenors efforts to disrupt the unique combination of forces in favor of an equalized efficient system is an effort to retain the privileges so long held by wealthy districts and others who seek to continue a system under which poor districts are continually to be used as an example of inferior programs in order to spur additional state spending.

IV.

The Defendant-Intervenors have in their responses to motions for rehearing merely restated the arguments that they have made in every part of this litigation, that is, that somehow Art. VII, Sec. 3 of the Texas Constitution is in effect repealed and that the

Efficiency provisions and the Equal Rights provisions of the Texas Constitution have made local school districts protectors of their local wealth, free from the shared burdens of providing for an efficient system for the State of Texas.

The Eanes I.S.D., Defendant-Intervenors pointed out that other options, which would not involve statewide or other recapture, are available; specifically, the Eanes intervenors recommended tremendous increases in state funding, or widespread consolidations of school districts. It is interesting to note that no legislators have filed bills to pursue such alternatives, and Defendant-Intervenors have consistently argued against such alternatives as either illegal or unwise policy.

V.

In summary, the Plaintiff-Appellants request that this Court either deny the Motion for Rehearing as well as the prayers of the Junell intervenors and the Defendant-Intervenors, or alternatively, grant the motion for rehearing on the limited issue of allowance of statewide recapture and find that such recapture is available as one method of designing and implementing a statewide efficient and constitutional school finance system.

DATED: February 20, 1991

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed by Federal Express on this 20th day of February 20, 1991 to the following attorneys of record:

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D 0378

No.D-0378

IN THE SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL,

VS.

WILLIAM N. KIRBY, ET. AL.

SUPPLEMENTARY RESPONSE OF PLAINTIFFS-APPELLANTS TO MOTION FOR REHEARING AND AMICUS CURIAE BRIEFS

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Edgewood I.S.D. et al.

Now come the Plaintiffs-Appellants Edgewood I.S.D. et al, who file this supplementary response to Plaintiff-Intervenors' Motion for Rehearing, the responses of Defendants and Defendant-Intervenors, and the responses of various Amicus Curiae.

Attached is a copy of the school finance bill that was passed by the House Public Education Committee on February 21, 1991 by a 8-1 vote. Upon information and belief, this bill will be voted on by the House of Representatives Wednesday, February 27, 1991.

This bill guarantees equity and recapture to the $1.30 tax level with some partially equalized enrichment allowed above that level.

It contains requirements of a constitutional school finance system as outlined by this Court. It is very similar to the bill passed by the Senate 20-7 on Wednesday, February 20, 1991.

It appears that a real consensus has developed among the Governor, Lieutenant Governor, House and Senate behind bills that change the school finance structure and assure efficiency and equality. By answering the questions so artfully posed to it, this Court would likely impede, rather than facilitate this process.

Therefore, Plaintiffs-Appellants pray that the Motion for Rehearing be denied or granted for the limited purpose of allowing state-wide recapture. Further Plaintiffs-Appellants pray that this Court not answer the various questions posed to it by the Amicus Curiae and Defendant-Intervenors.